

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KOCH FOODS OF ALABAMA, LLC,
an Alabama limited liability company,

Plaintiff and Counter-
Defendant,

vs.

GENERAL ELECTRIC CAPITAL
CORPORATION, a Delaware corporation,

Defendant, and Counter-
Plaintiff,

CIVIL ACTION NO.
2:07 CV 522-MHT

GE CAPITAL'S MOTION TO COMPEL INSPECTION OF
THE EQUIPMENT WITHIN A SHORTENED TIME PERIOD

Defendant and Counterplaintiff, General Electric Capital Corporation ("GE Capital"), by and through its undersigned counsel, and pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, hereby moves for the entry of an order shortening the notice necessary for inspection of certain equipment (the "Equipment"), which is the focus of this litigation. In support thereof, GE Capital respectfully states as follows:

1. On or about December 29, 2005, GE Capital and Sylvest Farms, Inc. ("Sylvest") executed a certain Master Lease Agreement and an equipment schedule, pursuant to which GE Capital leased the Equipment to Sylvest. Thereafter, Sylvest took possession of the Equipment at its chicken de-boning and processing facility located at 4530 Mobile Road, in Montgomery, Alabama (the "Facility").

2. On April 18, 2006, Sylvest filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Alabama. In conjunction with the bankruptcy case, certain assets of Sylvest, including the Facility but not the Equipment, were sold to Plaintiff Koch Foods of Alabama, Inc. ("Koch Foods"). Throughout this process, the Equipment has remained at the Facility.

3. The Equipment has now become a primary focus of the above-captioned litigation.

4. On September 7, 2007, pursuant to Rule 34 of the Federal Rules of Civil Procedure, counsel to GE Capital sent a request ("Rule 34 Request") to counsel to Koch Foods, asking that GE Capital, or an agent acting on its behalf, be allowed permission to enter the Facility and inspect or appraise the Equipment on September 24, 2007, or such other reasonable date as might be acceptable to Koch Foods. A true and correct copy of the Rule 34 Request is attached hereto as Exhibit A.

5. In correspondence delivered with the Rule 34 Request, GE Capital requested that Koch Foods voluntarily agree to shorten the 30-day notice period provided for in Rule 34, in order to permit GE Capital to complete an inspection and appraisal of the Equipment in advance of the deadline for submission of expert reports, which is currently scheduled for October 1, 2007.

6. In a response provided to GE Capital on September 11, 2007, Koch Foods indicated that it would work to identify acceptable dates for the inspection. However, a telephone call placed to counsel for Koch Foods on the morning of September 14, 2007, has yet to be returned. As of the filing of this Motion, no dates have been suggested by Koch Foods.

7. In the meantime, the deadline for submission of expert reports is fast approaching. In order to comply with the discovery deadlines related to expert disclosure and reports, and in the absence of any agreement by Koch Foods, GE Capital requests a shortening of the notice period for inspection of the Equipment pursuant to Rule 34.

8. GE Capital suggests that the inspection occur on September 24, 2007, which provides Koch Foods with over two weeks notice of the inspection. GE Capital asserts that such notice is reasonable under the circumstances.

9. In the alternative, if a different date is more acceptable to Koch Foods, GE Capital would consent to any reasonable date prior to September 24, 2007, for the inspection of the Equipment.

WHEREFORE, GE Capital requests that this Court enter an order directing that the 30-day notice period provided by Rule 34 be shortened to allow GE Capital, or its agent, to inspect the Equipment on, or prior to, September 24, 2007, and to grant any such other and further relief that this Court deems is appropriate under the circumstances.

Dated: September 17, 2007.

Respectfully submitted,

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ Rusha C. Smith
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Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Thomas G. Mancuso, Esq.
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/s/ Rusha C. Smith
COUNSEL

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
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KOCH FOODS OF ALABAMA, LLC,
an Alabama limited liability company,

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GENERAL ELECTRIC CAPITAL
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Defendant, and Counter-
Plaintiff,

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2:07 CV 522-MHT

GE CAPITAL'S REQUEST FOR INSPECTION OF CERTAIN EQUIPMENT

Defendant and Counterplaintiff, General Electric Capital Corporation, a Delaware corporation ("GE Capital"), by its counsel, and pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby requests that Plaintiff and Counterdefendant, Koch Foods of Alabama, LLC, an Alabama limited liability company ("Koch Foods"), allow access to, and permit inspection of, the equipment itemized in Section A of Schedule 001 (the "Equipment"), currently located at the facility at 4530 Mobile Road, Montgomery, Alabama, previously owned by Sylvest Farms and now owned by Koch Foods (the "Facility") as follows:

1. Produce the Equipment for an inspection, which may include, but is not limited to, the examination, photographing, testing, and/or appraisal, by GE Capital, or someone acting on GE Capital's behalf on September 24, 2007, at 10:00 a.m. at the Facility.
2. Permit entry to the Facility to GE Capital, or someone acting on GE Capital's behalf, for the purpose of inspecting, photographing, and/or testing the Equipment on September 24, 2007 at 10:00 a.m., and continuing until such inspection is completed to the satisfaction of GE Capital, or someone acting on GE Capital's behalf, but, in any event, not extending past 5:00 p.m. on September 24, 2007, unless by agreement of Koch Foods.

Dated: September 7, 2007.

Respectfully submitted,

GENERAL ELECTRIC CAPITAL CORPORATION

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Timothy S. Harris
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing GE Capital's Request for Inspection of Certain Equipment has been served upon counsel of record addressed as follows:

Thomas G. Mancuso, Esq.
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Mike Xu, Esq.
Schiff Hardin LLP
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Via UPS Overnight Delivery on Mr. Mancuso and via Messenger delivery on Mr. Geekie, this the 7th day of September, 2007.



COUNSEL